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Supreme Court of the United States

October Term, 1979

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,
Petitioners,

v.

JOHN ADAMS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR RESPONDENT

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CONSTITUTIONAL PROVISION INVOLVED

UNITED STATES CONSTITUTION
ARTICLE I, SECTION 10, CLAUSE 3

No State shall, without the Consent of Congress, . . . enter into any Agreement or Compact with another State . . . .

QUESTIONS PRESENTED

I. Did the Court of Appeals correctly hold that Article IV of the Interstate Agreement on Detainers, as evidenced by the language of the Agreement and its explicit legislative history, requires that prisoners transferred pursuant to Article IV of the Agreement be granted the same procedural safeguards afforded persons transferred under the Uniform Criminal Extradition Act?

II. If the Interstate Agreement on Detainers does not provide Extradition Act safeguards, does it violate the due process clause of the fourteenth amendment by its failure to provide prisoners minimal notice and hearing before their transfer to prisons in another state?

III. If the Interstate Compact on Detainers does not provide Extradition Act safeguards, does interstate transfer of prisoners under the Agreement violate the equal protection clause, since persons transferred under the Extradition Act, including prisoners, are entitled to procedural safeguards denied to prisoners transferred under the Detainer Agreement?

STATEMENT OF THE CASE

Procedural History

On June 22, 1977, respondent John Adams ("Adams"), on behalf of himself and all others similarly situated, commenced a civil rights action in the United States District Court for the Eastern District of Pennsylvania against various Pennsylvania and New Jersey authorities, individually and in their official capacities.[1] In the pro se Complaint (A. 12a-22a),[2] damages, a declaratory judgment, and injunctive relief are sought on the ground that Adams' transfer from Pennsylvania to New Jersey, and the transfers of other persons pursuant to the Interstate Agreement on Detainers Act, 19 P. S. § 1431 *et seq.* ("Detainer Agreement"),[3] violate the fourteenth amendment of the United States Constitution because: (1) notice and a hearing were not provided before the transfers, in violation of the due process clause; (2) the only procedure for challenging the transfers—motion to the governor for disapproval—does not satisfy due process requirements because the prisoners were not advised of their rights to make such a motion; and (3) Adams and others transferred under the Detainer Agreement are denied equal protection of the law, because others similarly situated may be transferred with adequate procedural safeguards

1. The defendants include the Governors of Pennsylvania and New Jersey, Milton Shapp and Brendan Byrne; the Superintendent of the State Correctional Institution at Graterford, Pennsylvania, Julius T. Cuyler; the Prosecutor of Camden County, New Jersey, Thomas J. Shusted; and two Camden County detectives whose identities are not known to Adams.

2. References to "A." are to the pages of the Appendix in the Supreme Court.

3. The Detainer Agreement is reproduced in the Appendix for Writ of Certiorari at 20a-31a. References to "Pet. A." are to the pages of the Appendix to the Petition for Writ of Certiorari.

under the Uniform Criminal Extradition Act, 19 P. S. § 191.1 *et seq.* ("Extradition Act").[4]

On September 15, 1977, an Answer was filed on behalf of defendants Shapp and Cuyler, asserting *inter alia* failure to state a claim upon which relief can be granted. (A. 48a-52a). Answers have never been filed for any of the other defendants.

On October 21, 1977, Judge McGlynn summarily dismissed the Complaint for failure to state a claim upon which relief could be granted, and filed a memorandum of decision in support of the dismissal. 441 F. Supp. 556 (E. D. Pa. 1977) (Pet. A. 14a-19a).[5] The court did not in any way attempt to determine the truth of Adams' allegations and did not consider certification of the case as a class action. *Id.*

Thereafter, on December 9, 1977, Adams filed a Notice of Appeal from the district court's order. In the United States Court of Appeals for the Third Circuit, unlike the court below, counsel was appointed to represent Adams. In a carefully considered opinion, the court of appeals held that, as a matter of statutory construction, Article IV(d) of the Detainer Agreement requires that the rights granted to inmates under the Extradition Act, including the right to a pre-transfer hearing, be afforded to inmates transferred pursuant to the Detainer Agreement. 592 F. 2d 720 (3d Cir. 1979) (Pet. A. 1a-13a). This ruling was based on the language of the Detainer Agreement and the Council on State Governments' interpretation of this statute.

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4. The Extradition Act is reproduced at Pet. A. 32a-46a.

5. This action was taken even though none of the defendants filed a motion to dismiss to which Adams could respond, and Adams was not afforded an opportunity to brief or otherwise respond to the issues raised in the Answer filed by defendants Shapp and Cuyler. The court did not appoint counsel to represent Adams, or permit the filing of an amended complaint. Moreover, the action was dismissed on behalf of defendants who did not even answer.

Because Congress had not only sanctioned the Agreement in advance but had joined in it thereafter, and because there is a strong federal interest in national uniformity in the interpretation of the Agreement, federal law was held to be controlling in interpreting the Agreement. The court found it unnecessary to reach the constitutional issues in vacating the judgment of the district court, remanding the case for further proceedings consistent with its opinion, including consideration of the propriety of declaratory relief applicable to members of the class.

Statement of Facts

At the time the Complaint was filed, Adams was in the State Correctional Institution at Graterford, Pennsylvania, having resided there since February 6, 1972. At some time before May 3, 1977, a Request for Temporary Custody under the Detainer Agreement, directed to defendant Cuyler and signed by defendant Shusted was lodged against Adams. The Request sought the removal of Adams from Graterford, and from the Pennsylvania prison system altogether, and his transportation to a Camden County, New Jersey jail. Adams was to remain in custody in New Jersey pending disposition of criminal charges against him.

Adams was given a copy of the Request, but was not informed that he could petition defendant Shapp and seek disapproval of his transfer to New Jersey[6] or granted a

6. Respondent Adams alleged in his Complaint that he did not receive notice of his right to petition the governor to disapprove his transfer. Petitioners imply that Adams received notice through receipt of Form I drafted by the COUNCIL OF STATE GOVERNMENTS in its HANDBOOK ON INTERSTATE CRIME CONTROL (rev. ed. 1966) (Brief for Petitioners at 44 n. 11). Nothing on the record contradicts Adams' claim of no notice. If Form I had been utilized, a copy of the form, signed by the prisoner, would have been retained by the Warden and thus available to Petitioners, HANDBOOK, p. 101, but no such document was ever made part of the record in this case.

hearing before transfer to the Camden jail.[7]

If Adams had been afforded a hearing or advised of his right to petition the governor, he would have been able to explain that New Jersey sought him for crimes alleged to have occurred more than three years earlier. Adams could have presented evidence that he was in Pennsylvania, not New Jersey, when these alleged crimes were committed, but, because his main alibi witness had died since the alleged offenses, his ability successfully to establish this defense at trial had been impaired substantially. Adams could also show that the New Jersey authorities knew of his whereabouts in Pennsylvania in June 1975, before the death of his alibi witness, yet failed to proceed against Adams until after her death in February 1976. Thus, Adams might well have been able to persuade the governor or hearing body that the request for removal should be disapproved.

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7. Adams' unsuccessful efforts in the state courts to enjoin transfer without a hearing (Brief for Petitioners at 31 n. 4) do not substitute for the due process protections accorded transferees under the Extradition Act and denied transferees under the Detainer Agreement.

SUMMARY OF ARGUMENT

The language of the Interstate Agreement on Detainers incorporates the rights granted to a prisoner by the Uniform Criminal Extradition Act. Because the Extradition Act remained in effect after the adoption of the Agreement and both statutes concern the same subject matter, principles of statutory construction dictate that these two statutes should be construed together. A joint construction of these two statutes logically leads to the conclusion that the phrase, "[n]othing contained in this article shall be construed to deprive any prisoner of any right . . . to contest the legality of his delivery," (Pet. A. 25a) in Article IV(d) of the Agreement preserves Extradition Act procedural protections when a prisoner is transferred pursuant to Article IV. This interpretation of these two statutes is supported by the language of Article III(e) of the Agreement. This Article states that a prisoner's request for the final disposition of a detainer under Article III constitutes a "waiver of extradition." (Pet. A. 23a-24a). Extradition in this context can only mean a waiver of the extradition rights granted by the Extradition Act.

Legislative history contemporaneous with the Agreement provides further strong support for interpreting the Agreement as preserving a prisoner's rights under the Extradition Act. The major purpose of the Agreement was to benefit prisoners, not to detract from their rights under the Extradition Act. It is therefore absolutely consistent with the desires of the legislature to construe the Agreement as incorporating and thus preserving the rights previously afforded a prisoner under the Extradition Act.

The transfer of persons pursuant to the Detainer Agreement without due process safeguards from the prison system of one state to a jail in a foreign state also violates the United States Constitution. The changes in the length

and conditions of confinement possible under such a transfer inflict a grievous loss upon liberty interests protected by the Fourteenth Amendment. Transferred prisoners are not afforded a hearing nor adequate opportunity to challenge the disruption of the rehabilitative process and the possible extension of the term of confinement. Although the prisoner has the right under the Detainer Agreement to petition the governor to disapprove the transfer request, the prisoner need not be, and here respondent was not, given notice of that right.

Involuntary transfers of fugitives from one state to another to answer criminal charges are ordinarily accomplished pursuant to the Extradition Act, which is applicable to prisoners as well as individuals at-large. This statute guarantees adequate procedural safeguards before transfer. Persons, such as respondent, who are transferred pursuant to the Detainer Agreement, are not afforded the rights provided to similarly situated prisoners transferred pursuant to the Extradition Act. There is no rational basis for this disparate treatment. Accordingly, prisoners transferred under the Detainer Agreement are denied Equal Protection of the law, in violation of the fourteenth amendment.

Argument.

I. THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT CORRECTLY HELD THAT THE INTERSTATE AGREEMENT ON DETAINERS INCORPORATES THE RIGHTS ACCORDED A PRISONER BY THE EXTRADITION ACT.

A. The Language of the Agreement Clearly Indicates that the Drafters Intended To Incorporate into the Agreement the Rights Granted to Prisoners by the Uniform Criminal Extradition Act.

The enactment of the Interstate Agreement on Detainers did not impliedly repeal Uniform Criminal Extradition Act procedures covering the interstate transfer of prisoners.[8] It is a cardinal rule of statutory construction

8. Petitioners have argued that, since the Agreement specifically covers the interstate transfer of prisoners, the Agreement should prevail over the general Extradition Act. (Brief for Petitioners at 45). This argument is based on the erroneous assumptions that the Extradition Act is a general statute, and that there is an inconsistency in affording a prisoner the protection of both statutes. Neither assumption is true.

The Uniform Extradition Act is not a general statute. Although Section 2 states that the Act is to apply to "any person charged" with a crime, respondents do not rely on this general language. 19 P. S. § 191.2 (Pet. A. 32a). Section 5 of the statute specifically deals with the extradition of "persons imprisoned or awaiting trial in another state." 19 P. S. § 191.5 (Pet. A. 34a). This language specifically places prisoners within the protections of the Extradition Act.

In addition, even if the Extradition Act were a general statute, subsequent enactment of a specific statutory provision will not defeat a general statute unless the two statutes are inconsistent. C. D. SANDS, 2A SUTHERLAND, STATUTORY CONSTRUCTION § 51.02 (1972). Effect should be given to nonconflicting provisions of overlapping statutes. **United States v. Burnett**, 505 F. 2d 815, 816 (9th Cir. 1974), *cert. denied* 420 U. S. 966 (1975). Since in this case the two statutes the Third Circuit examined are "complementary rather

that the enactment of subsequent legislation concerning the same subject matter as an earlier statute will not repeal the earlier statute by implication unless there is a substantial inconsistency between the two statutes or evidence of an intention to limit or repeal the first enactment. *See* **TVA v. Hill,** 437 U. S. 153, 189 (1978); **Morton v. Mancari,** 417 U. S. 535, 549 (1974); **Posados v. National City Bank,** 296 U. S. 497, 503 (1936); C. D. SANDS, 1A SUTHERLAND, STATUTES AND STATUTORY CONSTRUCTION, Sections 23.09, 23.10 (1972) (strong presumption against implied repeal). Instead, statutes on the same subject are construed together. **United States v. Borden Co.,** 308 U. S. 188, 198 (1939). *See* 2A SUTHERLAND, *supra,* Section 51.02.

Article IV(d) of the Agreement is designed to preserve prisoner rights. This section states:

> "Nothing contained in this article shall be construed to deprive any prisoner of *any right* which he may have to contest the legality of his *delivery as provided in paragraph (a) hereof,* but such delivery may not be opposed or denied on the ground that the

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8. (Cont'd.)

than conflicting," **Adams v. Cuyler,** 592 F. 2d 720, 725 (3d Cir. 1979) (Pet. A. 10a), there is no inconsistency involved in affording an inmate Extradition Act protection.

Petitioners' reliance on **Prieser v. Rodriguez,** 411 U. S. 475 (1973) is similarly misplaced. (Brief for Petitioners at 45). In **Rodriguez** this Court required prisoners attacking their confinement to proceed by habeas corpus instead of the Civil Rights Act. However, the statute construed in **Rodriguez,** 42 U. S. C. § 1983, was indeed a general statute, applicable to "every person" deprived of civil liberties by a state. Unlike the Extradition Act in the instant case, no provision of § 1983 specifically applied to prisoners. In addition, there was an inconsistency between the Civil Rights Act and the habeas corpus statute. The habeas corpus statute required state prisoner exhaustion of state remedies while § 1983 did not. **Rodriguez,** therefore, does not support petitioners' argument.

executive authority of the sending state has not affirmatively consented to or ordered such delivery."

19 P. S. § 1431 Art. IV(d) (Pet. A. 25a) (emphasis added).

The phrase "as provided in paragraph (a) hereof" within Article IV(d) is logically construed to modify "delivery," not "any right." The Interstate Agreement on Detainers contains two statutory procedures, Article III and Article IV, for arranging the transfer of a prisoner to another state in order to stand trial for crimes committed there. 19 P. S. § 1431 Arts. III, IV (Pet. A. 22a-25a). Whereas Article III is concerned with the transfer procedure when a prisoner requests final disposition of a detainer lodged against him, Article IV is concerned with the transfer procedure "by which a prosecutor who has lodged a detainer against a prisoner in another State can secure the prisoner's presence for disposition of the outstanding charges." **United States v. Mauro,** 436 U. S. 340, 351 (1978). Because the Agreement contains two possible transfer procedures and the legislature only wished to incorporate Extradition Act protections into the Agreement when a prisoner was transferred pursuant to Article IV(a), it was necessary to specify which prisoner delivery procedure was the object of Article IV(d). In order to accomplish this the phrase "as provided in paragraph (a) hereof" was inserted to modify delivery. Hence a prisoner retains "any right" he has to contest his delivery only when he is transferred under Article IV.[9]

The most important rights which Article IV(d) was designed to preserve are the procedural rights prisoners

9. All later references to prisoner delivery within Article IV(d) support the interpretation advocated by this brief. "Delivery" is always preceded by the word "such." The word "such" is meant to clarify which delivery is being referred to throughout this section, *i.e.*, "delivery as provided in paragraph (a) hereof." 19 P. S. § 1431, Art. IV(d) (Pet. A. 25a).

were granted by the Extradition Act. *See* 19 P. S. § 191.10 (Pet. A. 32a). The rights preserved by Article IV(d) cannot possibly be only the right to petition the governor as petitioners have claimed. (Brief for Petitioners at 39). The language "any right" suggests that a plurality of rights were meant to be preserved by the Agreement. The right to petition the governor is only one right.[10]

Furthermore, if the Agreement was intended to modify Extradition Act procedural rights, it would have explicitly done so. Article IV(d) of the Agreement clearly modified Extradition Act procedures which had required the affirmative consent of the executive authority of the sending state to prisoner delivery. As noted by the Court of Appeals below, "the fact that Article IV(d) does specifically refer to one minor procedural feature of the extradition process which is to be affected suggests forcefully that other aspects, particularly those furnishing safeguards to the prisoner, are to continue in effect." 592 F. 2d 720, 724 (3d Cir. 1979) (Pet. A. 9a). Therefore, the Extradition Act must be a source of rights preserved by Article IV(d). The opinion of the court below correctly construed the Agreement in this manner.[11]

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10. Article IV(d) would have been drafted differently if the legislature had sought to preserve only the right to petition the governor. For instance, the drafters might have changed the language "any right" to "the right," moved up the phrase "as provided in paragraph (a)" to modify "any right" instead of "delivery," or specified the one prisoner right which was being protected by Article IV(d) rather than resorting to a confusing cross-reference.

In addition, the right to petition the governor is not a right of which the statute requires the prisoner be informed. *See* Meyer, **Effective Utilization of Criminal Detainer Procedures,** 61 Iowa L. Rev. 659, 670 (1975). If the drafters had been concerned enough about protecting the prisoner's right to petition the governor to give it specific protection in Article IV(d), surely they would have also provided within the statute that the prisoner be informed of this right.

11. *Accord,* **Moen v. Wilson,** 189 Colo. 85, 536 P. 2d 1129 (1975); **McQueen v. Wyrick,** 543 S. W. 2d 778 (Mo. 1976); **State**

11. (Cont'd.)

ex rel. Garner v. Gray, 55 Wis. 2d 574, 201 N. W. 2d 163 (1972). *But see* **State v. Thompson,** 133 N. J. Super. 180, 185, 336 A. 2d 11, 14 (1975); **Hystad v. Rhay,** 12 Wash. App. 872, 533 P. 2d 409 (1975); **Commonwealth ex rel. Coleman v. Cuyler,** 396 A. 2d 394 (Pa. Super Ct. 1978); **Wertheimer v. State,** 294 Minn. 293, 201 N. W. 2d 383 (1972). The state opinions which have not construed the Agreement as incorporating Extradition Act procedures lack detailed, if any, statutory analysis.

In addition, state interpretations of interstate compacts, such as the Agreement, are not binding on the federal courts. The Constitution states: "No State shall, without the Consent of Congress . . . enter into any Agreement or Compact with Another State . . . ." U. S. Const. art. I, § 10, cl. 3. In **Petty v. Tennessee-Missouri Bridge Commission,** 359 U. S. 275, 278 (1959), this Court stated that, "The construction of a compact sanctioned by Congress . . . presents a federal question," and that "the meaning of a compact is a question on which this Court has the final say." *Id.* (*citing* **Delaware River Commission v. Colburn,** 310 U. S. 419, 427 (1940); **Dyer v. Sims,** 341 U. S. 22, 28 (1951)).

The construction of this particular compact is plainly a matter of federal law. Under the law of the Union doctrine a compact, by virtue of congressional sanction, becomes a "federal 'title, right, privilege or immunity.'" **Delaware River Commission v. Colburn,** 310 U. S. 419, 427 (1939); **League to Save Lake Tahoe v. Tahoe Regional Planning Agency,** 507 F. 2d 517 (9th Cir. 1974), *cert. denied* 420 U. S. 974 (1975). Congress had given advance consent for "any two or more States to enter into agreements . . . for cooperative effort . . . in the prevention of crime." 63 Stat. 107, § 111 (1949), as amended, 4 U. S. C. § 112 (1970). In addition, Congress later specifically manifested its consent to the Interstate Agreement on Detainers when the United States became a party to the Agreement. *See* 116 Cong. Rec. 13997-14000, 38840-38842 (1970). Thus, by virtue of Congressional approval of the Agreement, the interpretation of this statute is controlled by federal law. *Accord*, **Echevarria v. Bell,** 579 F. 2d 1022, 1024-1025 (7th Cir. 1978); **United States ex rel. Esola v. Groomes,** 520 F. 2d 830 (3d Cir. 1975) (Garth, J., concurring).

Secondly, the Agreement is concerned with the important national interest of national unity in the administration of justice. **Michigan v. Doran,** 439 U. S. 282, 288 (1978). The Agreement has been used to "extradite" prisoners. The fact that the Constitution contains the extradition clause is indicative of the importance of this national objective and distinguishes the Agreement, as an embodiment of these objectives, from other interstate compacts. This provides additional support for the use of federal law to interpret the Agreement. *See* **Smith v. Idaho,** 373 F. 2d 149 (9th Cir. 1967).

The decision of the court of appeals is further supported by the language of Article III(e) of the Agreement. Article III(e) provides in relevant part that:

> "Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated therein . . . and a waiver of extradition to a receiving state to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending state."

19 P. S. § 1431, Art. III(e) (Pet. A. 23a-24a).

The phrase "waiver of extradition" can only mean the waiver of the statutory extradition rights conferred upon the prisoner by the Extradition Act. Clearly, a waiver of extradition necessarily means a waiver of extradition rights because the use of the word waiver only makes sense when juxtaposed with rights. The extradition rights an inmate waives when he requests final disposition of a detainer must be statutory because the United States Constitution Extradition Clause, Article IV, Section 2, Clause 2, deals with the state's obligation to extradite and does not confer upon a prisoner any extradition rights. Therefore, a prisoner must have statutory extradition rights to waive.

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11. (Cont'd.)

Finally, uniformity can be achieved only by a controlling federal interpretation of the Agreement. A federal interpretation avoids the varying interpretations which states have placed on the Agreement, and the consequent administrative difficulties which conflicting obligations create for sending states. *See* **United States ex rel. Esola v. Groomes,** 520 F. 2d 830, 841 n. 3 (3d Cir. 1975). National uniformity is also furthered as a practical matter because the many states which have enacted the Interstate Agreement on Detainers and the Uniform Extradition Act are all subject to the same interpretation of these statutes. *See* **11 Uniform Laws Annotated** at 10, 68 (1980 Supp.) (the Interstate Agreement on Detainers has been adopted in 47 states, the United States, and the District of Columbia; the Extradition Act has been adopted in 49 states).

The only conceivable origin of these particular rights is the Extradition Act.[12]

12. Petitioners argue that because Article III(e) is phrased in terms of extradition, not Extradition Act procedures, the term extradition could not mean Extradition Act (Brief for Petitioners at 40-42). To support this argument they cite **Terlinden v. Ames,** 184 U. S. 270, 289 (1902), which defines extradition, when used in an international context, as the surrender of an individual from one nation to another. Petitioners also claim that because the directions for implementing the Agreement found in the 1966 edition of the COUNCIL OF STATE GOVERNMENTS, HANDBOOK ON INTERSTATE CRIME CONTROL, do not suggest that a prisoner is entitled to formal extradition proceedings, he does not have them.

Petitioners' argument is flawed in several respects. They have confused international and interstate extradition. Obviously, the drafters of the Agreement were not referring to international extradition in an interstate act. The extradition clause within the Constitution specifically deals with state obligations. States cannot interfere in foreign affairs, an area reserved by the Constitution exclusively to the President and Congress. **Zschernig v. Miller,** 389 U. S. 429, 432 (1962). Therefore, in this context, extradition must mean interstate extradition. Since interstate extradition is almost uniformly governed by the Extradition Act, the reference in Article III(e) is logically to Extradition Act procedures.

In addition, petitioners' argument is not supported by the COUNCIL OF STATE GOVERNMENTS, HANDBOOK ON INTERSTATE CRIME CONTROL (rev. ed. 1966). The handbook does not advocate depriving prisoners of the protections afforded by the Extradition Act. In fact, forms 1 and 2 in this handbook both inform the prisoner that a request for final disposition of a detainer constitutes a waiver of extradition. *Id.* at 101-02. The "Suggested Instructions for Wardens" provide that all prisoners with detainers lodged against them receive form 1. *Id.* at 112-13. It is evident that the handbook, if anything, supports preserving a prisoner's right to Extradition Act procedures.

Even if this handbook had supported petitioners argument, it would have little, if any, value for statutory interpretation. It was published after fifteen states had already ratified the Agreement on Detainers. *Id.* at 99. Clearly, the handbook could not have influenced the original drafters. Therefore, assuming it is relevant at all, it should not carry the same weight as legislative history contemporaneous with the Agreement itself. *Cf.* **United States v. Southwestern Cable Co.,** 392 U. S. 157, 170 (1968) ("the views of one Congress as to the construction of a statute adopted many years before by another Congress have 'very little, if any, significance.'") (citations omitted). Since at the time this handbook was published there were "relatively few reported cases

The language of Article IV(d) and Article III(e) demonstrates that it was absolutely correct for the Court of Appeals to construe the Interstate Agreement on Detainers as incorporating the procedural protections of the Extradition Act.[13]

B. The Legislative History of the Interstate Agreement on Detainers Supports the Court of Appeals' Interpretation of the Agreement.

Even if the statutory language did not compel the conclusion that Article IV of the Detainer Agreement preserves the Extradition Act rights of a transferred prisoner, the legislative history of the Agreement would do so.[14] The comments of the Council of State Govern-

12. (Cont'd.)
construing procedure and practice under the compact," HANDBOOK, *supra* at 115, the handbook was merely echoing, without legal precedent, how some of the states may have been interpreting the Agreement. Thus, the handbook does not support petitioners' position and has little, if any, value as a guide for statutory interpretation.

13. Indeed, if petitioners are correct in their argument that the Agreement was contemplated by and in direct response to language within Section 5 of the Extradition Act (Brief for Petitioners at 44 n. 11), the Extradition Act and the Agreement must be read together. If the drafters of the Detainer Agreement intended to complement the Extradition Act, then the phrases "any right" and "extradition" in the Agreement refer to the rights under the Extradition Act which are waived under Article III and preserved under Article IV of the Detainer Agreement.

14. Plainly petitioners cannot complain about the fact that the court of appeals used legislative history to bolster its interpretation of the Detainer Agreement (*see* Brief for Petitioners at 42-43). At the most, the interpretation urged by petitioners is an alternative to the reading adopted by the court of appeals. In that case, it would be permissible to look beyond the language of the statute itself because the language of the Agreement was ambiguous. As previously discussed, the phrase "any right" within Article IV(d) could be construed as referring either to the right to petition the governor or the right to Extradition Act procedures, and, indeed, various state and federal courts have given different constructions

ments concerning the proposed Detainer Agreement distinguish between the rights of the prisoner, which are preserved, and the rights of the state which are diminished: [15]

> "Normally, the only way to get a prisoner from one jurisdiction to another for purposes of trial on an indictment, information or complaint is through resort to extradition or waiver thereof. If the prisoner waives, there is no problem. However, if he does not waive extradition, *it is not appropriate to attempt to force him to give up the safeguards of the extradition process,* even if this could be done constitutionally. *Nevertheless, the right to insist on action by the governor is a right of the state and not of the prisoner.* Consequently, it is provided that the prisoner shall not be able to plead gubernatorial inactivity in resist-

14. (Cont'd.)

to the language of the Agreement. *See* note 11 *supra.* This ambiguity is sufficient to warrant the introduction of legislative history for clarification. Moreover, even if the Agreement language were clear, there is "wisely no rule of law forbidding resort to explanatory legislative history no matter how 'clear the words may appear on "superfiicial examination."'" **Harrison v. Northern Trust Co.,** 317 U. S. 476, 479 (1943) (*quoting* **United States v. American Trucking Associations,** 310 U. S. 534, 543-44 (1940), *citing* **United States v. Dickerson,** 310 U. S. 554, 562 (1940)). For example, although this Court concluded in **United States v. Oregon,** 366 U. S. 643, 648 (1961), that a statutory provision was "clear and unequivocal" it still went on to discuss the statute's legislative history and determine that it was "nonconclusive." *Id.* Certainly there is nothing in the case at hand which prevents the consideration of legislative history.

15. Language contained in ABA PROJECT ON MINIMUM STANDARDS FOR CRIMINAL JUSTICE, STANDARDS RELATING TO SPEEDY TRIAL, Section 3.1(d) (1967), supports this reading of the legislative history. Its suggested standard to protect the right to speedy trial of a person serving a term of imprisonment differentiates between "the traditional right of the executive to refuse transfer and the right of the prisoner to contest the legality of his delivery." *Id.*

ing delivery to the other state. The situation contemplated by this portion of the agreement is different from that dealt with in Article III. That article relates to proceedings initiated at the request of the prisoner. Accordingly, in such instances it is fitting that the prisoner be required to waive extradition. In Article IV the prosecutor initiates the proceeding. Consequently, *it probably would be improper to require the prisoner to waive those features of the extradition process which are designed for the protection of his rights.* Nevertheless, Article IV(a) gives the governor an opportunity to refuse the request for prisoner availability if the governor acts within thirty days. It is quite likely that in a large majority of cases there will be no gubernatorial action or even a request for it. The possibility is left open merely to accommodate situations involving public policy which occasionally have been found in the history of extradition."

COUNCIL OF STATE GOVERNMENTS, SUGGESTED STATE LEGISLATION, PROGRAM FOR 1957, 78-79 (1956) (emphasis added).

As these comments indicate, Article IV modified the rights of the sending state while leaving those of the prisoner intact. A request for a prisoner made by a demanding state under the Agreement, unlike the Extradition Act, no longer required gubernatorial approval from the sending state. *Compare* 19 P. S. § 191.19 *with* 19 P. S. § 1431 Art. IV(d) (Pet. A. 40a-41a, 25a). However, the language of Article IV(d) indicates that the Agreement was not meant to detract from then existing prisoner rights. 19 P. S. § 1431, Art. IV(d) (Pet. A. 25a). Consequently, even if there are conflicting states' rights

under the Extradition Act and the Agreement, only the portions of the Extradition Act which concern the rights of the state should be considered modified.[16] Prisoner rights, such as the right to notice and a hearing under Section 10 of the Uniform Extradition Act, should remain in force.[17] 19 P. S. § 191.10 (Pet. A. 36a).

Furthermore, the remedial nature of the Agreement supports an interpretation which favors prisoners' rights. The fact that the Agreement is intended to benefit prisoners is illustrated by the House and Senate Reports which dealt with the need for this legislation. These reports stressed the need for detainer reforms designed to minimize the destructive impact of detainers on prisoners.

> "[A] prisoner who has had a detainer lodged against him is seriously disadvantaged by such action. He is in custody and therefore in no position to seek witnesses or to preserve his defense. He must often be kept in close custody and is ineligible for desirable work assignments. What is more, when detainers

16. The Court of Appeals in **Atkinson v. Hanberry,** 589 F. 2d 917 (5th Cir. 1979), failed to recognize the distinction between the rights of the sending state and the rights of the prisoner. *Id.* at 919. However, because the issue was not raised and because this case concerned the transfer of a prisoner from federal custody to state custody instead of interstate extradition, the **Atkinson** court did not specifically decide whether the Interstate Agreement on Detainers incorporates Extradition Act procedures. 539 F. 2d at 920 n. 6.

17. Granting an inmate the right to the essential protections of an Extradition Act hearing would enable him to question:

> "(a) whether the [requesting] . . . documents on their face are in order;
>
> (b) whether the [prisoner] . . . has been charged with a crime in the demanding state;
>
> (c) whether the [prisoner] . . . is the person named in the request for extradition; and
>
> (d) whether the [prisoner] . . . is a fugitive."

Michigan v. Doran, 439 U. S. 282, 289 (1978).

> are filed against a prisoner he sometimes loses interest in institutional opportunities because he must serve his sentence without knowing what additional sentences may lie before him, or when, if ever, he will be in a position to employ the education and skills he may be developing."

United States v. Mauro, 436 U. S. 340, 353 (1978) (citing H. Rep. No. 91-1018, at 3 (1970); S. Rep. No. 91-1356, at 3 (1970)).[18] This purpose is explicitly recognized in Article I of the Agreement. *See* 19 P. S. § 1431, Art. I (Pet. A. 21a).

Moreover, the remedial thrust of the Agreement is specifically recognized in Article IV. In **United States v. Mauro,** this Court recognized that the real concern behind the Article IV requirement that a prisoner be tried before he is returned to the sending state was that "if the prisoner were returned to the sending State prior to the disposition of the charges in the receiving State, the detainer previously lodged against him would remain in effect with all its attendant problems." 436 U. S. 340, 361 n. 26 (1978). Therefore, Article IV should be construed in a manner consistent with its remedial purposes.[19] Such a

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18. *See also* **United States v. Ford,** 550 F. 2d 732, 737-40 (2d Cir. 1977), *aff'd sub nom.*, **United States v. Mauro,** 436 U. S. 340 (1978); **Stroble v. Anderson,** 587 F. 2d 830, 835-36 (6th Cir. 1978), *cert. denied*, 440 U. S. 940 (1979); **Pitts v. North Carolina,** 395 F. 2d 182, 187 (4th Cir. 1968); Bennett, **The Last Full Ounce,** 23 Fed. Prob. 20 (June 1969); Note, **The Detainer: A Problem in Interstate Criminal Administration,** 48 Colum. L. Rev. 1190 (1948); Note, **Convicts—The Right to Speedy Trial and the New Detainer Statutes,** 18 Rutgers L. Rev. 828 (1964).

Contrary to petitioners' argument that a free citizen who is extradited should not receive fewer procedural protections than a prisoner who has a detainer lodged against him (Brief for Petitioners at 47), the unique disadvantages which the detainer creates for inmates justify giving prisoners the protections of both the Agreement and the Extradition Act.

19. *See* **Peyton v. Rowe,** 391 U. S. 54, 65 (1968); **Tcherepnin v. Knight,** 389 U. S. 332, 336 (1967); COUNCIL OF STATE GOVERN-

liberal construction, as required by Article IX of the Agreement, 19 P. S. § 1431, Art. IX (Pet. A. 29a), would incorporate the rights guaranteed a prisoner by the Extradition Act.

The Agreement was primarily designed to safeguard prisoner rights and it is totally consistent with legislative intent to construe the Agreement in the prisoner's favor.[20] If a prisoner wishes to accelerate the disposition of a detainer lodged against him in order to diminish the disruptions caused by the lodging of the detainer, he can proceed under Article III or waive his rights under Article IV. However, a prisoner demanded under Article IV should not be forced to sacrifice the Extradition Act rights which he held prior to the adoption of the Agreement.

II. INTERSTATE TRANSFER OF PRISONERS WITHOUT NOTICE OR HEARING VIOLATES THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT.

Even if Adams had no statutory right under the Detainer Agreement to Extradition Act protections, the

19. (Cont'd.)

MENTS, SUGGESTED STATE LEGISLATION, PROGRAM FOR 1957, 78 (1956); C. D. SANDS, 3 SUTHERLAND, STATUTORY CONSTRUCTION, § 60.01 (1972).

20. Petitioners claim that the Agreement policy favoring swift disposition of detainers would be subverted by allowing an inmate a "reasonable time" to apply for a writ of habeas corpus. (Brief for Petitioners at 46-47). This is incorrect. Allowing a prisoner a reasonable time to file for a writ of habeas corpus would not significantly lengthen the detainer process. The reasonable time a judge fixes for a prisoner to file for a writ of habeas corpus under the Extradition Act can run concurrently with the thirty days a prisoner is given to petition the governor under the Detainer Agreement. If a prisoner decides to apply for the writ, the habeas corpus hearing can be held as early as the thirty-first day after a detainer has been lodged against a prisoner. Furthermore, the Agreement's concern with the swift disposition of detainers is only indirectly for the benefit of the government, but is based upon the prisoner's direct rehabilitation interest.

Constitution prohibits his transfer from the prison of one state to a jail in a foreign state without the basic protections of notice and a hearing.

The fourteenth amendment's protection against the deprivation of liberty without due process of law remains viable even when an individual's liberty is already abridged under lawful sentence. *See, e.g.*, **Wolff v. McDonnell,** 418 U. S. 539, 555-56 (1974); **Gagnon v. Scarpelli,** 411 U. S. 778 (1973); **Morrissey v. Brewer,** 408 U. S. 471 (1972). A prisoner's rights and privileges may be diminished only to the extent required "by the needs and exigencies of the institutional environment;" his rights are only "subject to restrictions imposed by the nature of the regime to which [he has] been lawfully confined." **Wolff v. McDonnell,** *supra* at 555-56. An ordinary citizen cannot be removed from his home in one state and taken against his will to another state without notice and hearing. A prisoner should be entitled to the same due process protections, since summary removal is not necessitated by the exigencies of the institutional environment or the nature of the prison regime to which he has been confined.

A. Interstate Transfer of Prisoners for As Long As 120 Days Without the Most Basic Due Process Safeguards Impermissibly Infringes Upon Liberty Interests Protected by the Fourteenth Amendment.

Transfer under the Detainer Agreement may extend the term of an individual's prison confinement significantly. The Detainer Agreement permits a prisoner with only days or weeks left before the completion of his sentence to be sent to another state and held for up to 120 days, thus effectively extending the term of his incarceration without fundamental due process safeguards merely be-

cause he happened to be imprisoned and not at large on the day the necessary papers were received. The liberty interest of an individual whose sentence has been completed is identical to that of an ordinary citizen who may not be plucked from his home and transported against his will to another state without notice and hearing.

Similarly, a prisoner whose parole is imminent will necessarily be denied this increased freedom for reasons unrelated to eligibility in the sending state. Although there is no constitutional right to parole, the revocation of parole once earned and granted may not be accomplished without basic due process protection. **Greenholtz v. Nebraska Penal Inmates,** 442 U. S. 1, 9 (1979); **Morrissey v. Brewer,** *supra* at 480-84. Certainly if parole presents a liberty interest sufficient to require that no revocation take place without a hearing (even in the face of parole violations), then the unavailability of *earned* parole under the Detainer Agreement during the term of incarceration in the receiving state must represent a loss of a similar interest. In addition, there exists a protected liberty interest in the deprivation of good time credits accrued toward parole. **Wolff v. McDonnell,** *supra* 418 U. S. at 571-72, n. 19. Successful completion of in-prison programs is often relevant for an inmate's parole or acceptance into a pre-release program. A transfer under the Detainer Agreement may last for months, thus impairing the acquisition of a greater measure of liberty, since the grant of parole and pre-release is predicated in part upon an individual's good behavior in prison. His behavior in a foreign jail is impossible for the parole authorities in the sending state to evaluate.

Transfer under the Detainer Agreement may represent a major change in the conditions as well as the length of confinement. Removal and transfer to a foreign state's

jail for as long as 120 days is analogous to removal from the general prison population and transfer to solitary confinement, a change in the conditions of imprisonment which may not be accomplished without due process safeguards. **Enomoto v. Wright,** 434 U. S. 1052 (1978), *aff'g* 462 F. Supp. 397 (N.D. Cal. 1976); **Wolff,** *supra* at 557. At stake in both the Detainer Agreement and solitary confinement transfers is the disruption of the prisoner's environment, including any number of educational, work, or other rehabilitative programs. The inmate's personal progress, rehabilitation, and opportunities for post-prison employment may be substantially retarded or even extinguished by such transfers. As a practical matter, the only interests a person has while in prison are rehabilitation, freedom of movement within the institution, and the opportunity to obtain early release, all of which are infringed upon by removal and interstate transfer. Yet, ironically, jails and detention centers share with solitary confinement, if for different reasons, an almost total lack of rehabilitation programs and recreational facilities which are available to the general population of convicted prisoners. In addition, transfers may take a prisoner across the country, away from family and friends who support him.

The impairment of liberty triggered by transfer under the Detainer Agreement, the change of sovereignty of the jailor and the existence of a statutory scheme which gives at least a limited right to petition the governor for disapproval distinguish interstate transfer from the intrastate transfer of prisoners within a unitary system, which may be carried out without notice, hearing, or reason. **Montanye v. Haymes**, 427 U. S. 236 (1976); **Meachum v. Fano,** 427 U. S. 215 (1976). In those cases, the Court emphasized that intrastate transfers are often routine matters which may be ordered for any or no reason; that the

imposition of due process limitations on such transfers "would subject to judicial review a wide spectrum of discretionary actions that traditionally have been the business of prison administrators rather than of the federal courts," **Meachum v. Fano,** *supra* at 225; that the deprivation of liberty authorized by a valid conviction includes confinement in any of the state's prisons; that the conditions and degree of confinement are within the sentence imposed; and that, therefore, sufficient due process protection is afforded during the criminal trial.

Contrary to the contention of petitioners, on the other hand, the prisoner's liberty interest changes significantly when he crosses a state's boundary. (Brief for Petitioners at 50-52). While the conditions of imprisonment may be changed by intrastate transfer (*e.g.*, minimum security to maximum security), the term of imprisonment is not affected by such a transfer.[21] Furthermore, the administrative considerations underlying the decisions involving intrastate transfer are not applicable to interstate transfers under the Detainer Agreement. Thus, **Montanye** and **Meachum** are inapposite to the instant case. Moreover, the Court in **Meachum** recognized that a greater liberty interest exists even in intrastate transfer when there is a right or justifiable expectation rooted in a state law that the prisoner will not be transferred except for misbehavior or upon the occurrence of specified events. **Meachum v. Fano,** *supra* at 226-27. Certainly a person committed to serve as a sentenced prisoner in the Pennsylvania prison system has a reasonable expectation that he will serve his term there. It is clear that a person's liberty is protected by due process even when that liberty is a statutory creation of the state. **Wolff v. McDonnell,** *supra,* 418 U. S. at 558.

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21. In **Montanye,** the Court stressed that the transfer to a maximum security facility was effected without loss of good time, segregated confinement, loss of privileges, or any other disciplinary measures. **Montanye v. Haymes,** *supra* at 238.

Nor does the one case upholding an interstate transfer occurring pursuant to a compact establishing a joint system of interstate prisons [22] support petitioners. Such a transfer is more like intrastate transfer than interstate transfer under the Detainer Agreement. *See* **Sisbarro v. Warden, Mass. State Penitentiary,** 592 F. 2d 1, 3 (1st Cir. 1979), *cert. denied,* — U. S. —, 100 S. Ct. 99 (1979). There is no significant change in the term of confinement engendered by a joint-system transfer where the cooperating state systems function in effect as a single unit. Nonetheless, the First Circuit erred in its analysis in **Sisbarro** when it concluded that the burden of disadvantage to prisoners is no longer a viable test for the need for due process safeguards, and that therefore there is no distinction between intra and interstate transfer. **Sisbarro,** *supra* at 3. This reasoning ignores the Court's pronouncement that consideration of what safeguards may be required under any given set of circumstances must begin with a determination of the precise nature of the government function involved as well as of the prisoner's interest

22. *See* New England Interstate Corrections Compact, M. G. L. ch. 125, App. Secs. 1-1-1-3. Article I of the Compact reads:

> "The party states, desiring by common action to fully utilize and improve their institutional facilities and to provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. *The purpose of this compact is to provide for the mutual development and execution of such programs of co-operation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.*"

Id. (emphasis added). The goal of enhancing treatment and rehabilitation through pooling of resources distinguishes this compact from the Detainer Agreement under which members maintain rigid separation of state prison systems, facilities, procedures, and resources.

affected by government action. **Wolff v. McDonnell,** *supra,* 418 U. S. at 560, (*quoting* **Morrissey v. Brewer,** 408 U. S. at 481).

That proceedings under the Detainer Agreement involve a significant impairment of liberty is, moreover, made clear by the fact that mere lodging of a detainer is considered to be sufficient custody for purposes of federal habeas corpus jurisdiction, *see, e.g.,* **Braden v. 30th Judicial Circuit Court,** 410 U. S. 484, 489 n. 4 (1973), and has been held to constitute an arrest by the Supreme Court of Pennsylvania, **Commonwealth ex rel. Knowles v. Lester,** 456 Pa. 423, 321 A. 2d 637 (1974). Under the Detainer Agreement, the first step in the removal and transfer process is the lodging of a detainer. If that step alone imposes an additional and different restraint upon the prisoner sufficient to constitute custody and an arrest, certainly the further steps of removing and holding the prisoner for four months—or perhaps more—in a foreign jail affect the prisoner's liberty interest under the due process clause as well. As in transfer from a prison to a mental hospital, transfer under the Detainer Agreement constitutes a "major change in the conditions of confinement amounting to a grievous loss that should not be imposed without the opportunity for notice and an adequate hearing." **Vitek v. Jones,** 48 U. S. L. W. 4317, 4319 (Mar. 25, 1980).

B. The Fundamental Due Process Protections of Notice and a Hearing are Constitutionally Mandated Before Interstate Transfer.

The Detainer Agreement grants the prisoner the right to petition the governor for disapproval of the demanding state's request for transfer. This statutory right is itself a liberty interest protected against deprivation by the due process clause. *See, e.g.,* **Wolff v. McDonnell,** *supra,* 418 U. S. at 557-58. At the very least, due process

standards mandate that a prisoner be notified of his right to petition the governor to disapprove the transfer.

The summary removal and transfer proceedings sanctioned by the Detainer Agreement are precisely the type of arbitrary state governmental action the due process clause of the fourteenth amendment was intended to prevent. Indeed, "[t]he touchstone of the Due Process clause is protection of the individual against arbitrary action of the government." **Wolff v. McDonnell,** *supra,* 418 U. S. at 558 (1974), *quoting* **Dent v. West Virginia,** 129 U. S. 114, 123 (1889). Nothing is more arbitrary than granting a right but neglecting to inform the intended beneficiary of it. The request for transfer rarely will come to the attention of the governor for disapproval unless the prisoner not only has the right to make such a motion, but also is told that he has it. The prisoner's petition in response to a request for his transfer under the Detainer Agreement must be distinguished from a prisoner-initiated petition, such as a request for pardon. Under the terms of the Detainer Agreement, it is the government which initiates action against the prisoner and the petition is in response to a proposed change in the existing term and conditions of imprisonment. Common sense, proper statutory construction, and concepts of fundamental fairness encompassed by the due process clause mandate that every prisoner be given notice of his right to petition the governor.

It is evident that persons transferred between states under the Detainer Agreement are entitled to some procedural safeguards under the due process clause.[23] The

23. Two of the three highest state courts which have considered the issue have held that the Detainer Agreement would be unconstitutional without the due process safeguards of notice and hearing. **Moen v. Wilson,** 189 Colo. 85, 536 P. 2d 1126 (1975); **State ex rel. Garner v. Gray,** 55 Wis. 2d 574, 201 N. W. 2d 163 (1972). *Compare* **Wertheimer v. State,** 294 Minn. 293, 201 N. W. 2d 383 (1972).

prisoner must, at the least, receive advance notice of the demanding state's request and of his right to petition the governor for disapproval of that request. *See, e.g.*, **Wolff v. McDonnell,** *supra,* 418 U. S. at 563-64; **Gagnon v. Scarpelli,** *supra,* 411 U. S. at 786; **Morrissey v. Brewer,** *supra,* 408 U. S. 486-87; **In Re Gault,** 387 U. S. 1, 33 (1967).

In addition to notice, some form of hearing should be held to assure that there is no mistake as to the identity of the person to be removed, that the demanding state's charging and requesting documents are in order, and that the prisoner has a reasonable opportunity to present evidence in opposition to his removal and transfer. *See, e.g.*, **Michigan v. Doran,** 439 U. S. 282, 289 (1978); **Wolff v. McDonnell,** *supra,* 418 U. S. at 566-67; **Gagnon v. Scarpelli,** *supra,* 411 U. S. at 790; **Ham v. South Carolina,** 409 U. S. 524 (1973); **Morrissey v. Brewer,** *supra,* 408 U. S. at 487-89.

> "No better instrument has been devised for arriving at truth than to give a person in jeopardy of serious loss notice of the case against him and an opportunity to meet it. Nor has a better way been found for generating the feeling, so important to a popular government, that justice has been done."

Joint Anti-Fascist Committee v. McGrath, 341 U. S. 123, 171-72 (1951) (Frankfurter, J., concurring).

Our Constitution contemplates that due process will accomplish more than the avoidance of error. Recognition of the integrity of the individual demands that one whose liberties are about to be curtailed be given an opportunity to be heard from and told why. These rights exist separately from the right to secure a different outcome.

Petitioners rely on **Frisbie v. Collins,** 342 U. S. 519 (1952), and **Lascelles v. Georgia,** 148 U. S. 537 (1893), in support of their proposition that respondent has no constitutionally protected rights governing his interstate transfer. This reliance is misplaced, since **Frisbie** and **Lascelles** involve challenges to criminal trials held and convictions obtained in the prosecuting state after interstate transfer. **Frisbie** stands only for the proposition that, since the manner of delivery for trial in no way impinges upon the fairness or the constitutionality of the trial process, it does not render reversible an otherwise valid judgment. In the instant case, respondent does not contest his New Jersey criminal proceeding. Unlike Frisbie, he attacks his interstate transfer directly and raised this attack in advance of transfer.

Petitioners would over-extend **Frisbie** to support the proposition that interstate transfers are not subject to any constitutional limitations or safeguards. This is inaccurate for, while no particular form of procedure is constitutionally required, the absence of all procedural safeguards would allow a state to use the courts to aid it in abducting citizens of other states to answer criminal charges without any notice to the person to be kidnapped that he might protest or even an informal inquiry into whether the person to be seized is the person wanted. Certainly such anarchical "justice" is not consistent with modern concepts of due process of law which have been evolving over the past half century or more.

III. TRANSFER UNDER THE DETAINER AGREEMENT VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT SINCE SIMILARLY SITUATED PRISONERS TRANSFERRED UNDER THE EXTRADITION ACT ARE ENTITLED TO ADEQUATE PROCEDURAL SAFEGUARDS WHICH ARE DENIED TO PRISONERS TRANSFERRED UNDER THE DETAINER AGREEMENT.

Interstate transfers of persons for criminal prosecution are ordinarily accomplished pursuant to the Extradition Act. This statute applies to all such transfers, including those involving persons serving a term of imprisonment. The continued application of the Extradition Act may be inferred from 19 P. S. § 191.5 (Pet. A. 34a) which allows the Commonwealth to seek custody of prisoners in other states and from the fact that party states to the Extradition Act may seek extradition of Pennsylvania prisoners. **Commonwealth ex rel. Coleman v. Cuyler,** 396 A. 2d 394, 402 (Pa. Super. Ct. 1978) (Spaeth, J., dissenting). Even if authorities in every state accepted petitioner's contention that all Pennsylvania prisoners may only be transferred under the Detainer Agreement, this ignores the Agreement's provision that it may be used only when both the sending and receiving states are parties to the Agreement. To date, the Detainer Agreement has not been adopted by all the states.[24] Therefore, a Pennsylvania prisoner requested by a state not a party to the Agreement is provided with the more expansive protections of the Extradition Act, while respondent and other prisoners like him may not avail themselves of these protections.

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24. *See* 11 Uniform Laws Annotated at 68 (Supp. 1980).

A. The Detainer Agreement and Extradition Act Differ Substantially in Both the Type and Degree of Protection Afforded Prisoners.

The procedures for interstate transfer under the Extradition Act provide far superior protections for the prisoner than those under the Detainer Act. First, rather than the simple written request presented to the prison authorities under the Detainer Agreement, the Extradition Act requires a formal request by the governor of the demanding state addressed to the governor of the sending state. This request must be accompanied by charging documents and must contain recitals that, *inter alia*, the person requested was present in the demanding state when the crime was committed and thereafter fled, 19 P. S. § 191.3 (Pet. A. 33a), or that he committed an act outside the demanding state which resulted in a crime in the demanding state, 19 P. S. § 191.6 (Pet. A. 34a). Second, the Detainer Agreement provides that "delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery." 19 P. S. § 1431, Art. IV(d). (Pet. A. 25a). On the other hand, an Extradition Act transfer may be accomplished only after the person sought has been formally arrested upon a warrant of arrest signed by the governor of the sending state. 19 P. S. § 191.7-.8 (Pet. A. 35a). Third, after request under the Detainer Agreement, the prisoner has a right to petition the governor for disapproval, but he is rarely advised of this right, and the petition to the governor provided by the Detainer Agreement rarely results in relief. *See* **Commonwealth ex rel. Coleman v. Cuyler,** *supra*, 396 A. 2d at 404 (Spaeth, J., dissenting). The prisoner has no way to ensure that the governor's decision will be based on the facts, since there is no method established

by which the governor can find facts.[25] Moreover, the Agreement does not even provide that the governor must be informed of the request. Yet if the governor fails to act on the petition for thirty days, the prisoner is transferred to the receiving state. *See* 19 P. S. § 1431, Art. IV(d) (Pet. A. 25a). By contrast, the Extradition Act provides:

> "No person arrested upon [the governor's] warrant shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of a court of record in this State who shall inform him of the demand made for his surrender and of the crime with which he is charged and that he has the right to demand and procure legal counsel, and, if the prisoner or his counsel shall state that he or they desire to test the legality of his arrest, the judge of such court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus."

19 P. S. § 191.10 (Pet. A. 36a).

Finally, under the Detainer Agreement, no pre-transfer hearing is required. Under the Extradition Act, the person arrested may challenge the transfer by petition for a writ of habeas corpus. A hearing is then required at which the demanding state must establish that the requesting documents are in order, that the person sought is charged with a crime in the demanding state, that he is a fugitive, and that he was present in the demanding state at the time the crime charged was committed. *See, e.g.*, **Michigan v. Doran**, *supra*, 439 U. S. at 289.

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25. There is, of course, no way for a governer of the sending state to have a hearing under the Extradition Act, but that stage is not the sole opportunity for the prisoner to challenge his transfer.

B. The Disparate Treatment of Prisoners Subject to Interstate Transfer Under the Extradition Act and Detainer Agreement Is Irrational.

The equal protection clause of the fourteenth amendment forbids discrimination between persons who are similarly situated, and requires that, at a minimum, there be some rational basis for treating such persons differently. *See, e.g.*, **McGinnis v. Royster,** 410 U. S. 263 (1973); **James v. Strange,** 407 U. S. 128 (1972); **Humphrey v. Cady,** 405 U. S. 504 (1972). These standards are not inapplicable merely because the persons involved are prisoners serving valid sentences. *See* **Baxtrom v. Herold,** 383 U. S. 107 (1966).

The petitioners' contention that the only classes drawn by the two statutes in question are all prisoners on the one hand and the general public on the other (Brief for Petitioners at 55) ignores the reality that interstate transfer of persons may occur under either the Extradition Act or the Detainer Agreement as a result of an arbitrary decision to proceed under one statute rather than another.[26] Equal protection claims are especially persuasive if an individual was deprived of procedural protections merely by the arbitrary decision of a state to utilize one statute rather than another. **Humphrey v. Cady,** *supra* at 512.

Moreover, even if arbitrary decisions are avoided by a uniform approach to all transfers; in some instances a

26. The decision by the Court in **United States v. Mauro,** 436 U. S. 340, 369-72 (1978), binding the United States by the Detainer Agreement when it activates its provisions by filing a detainer against a state prisoner and then obtains his custody by means of a writ of habeas corpus *ad prosequendum,* has not resolved the issue of arbitrary choice of statute when one state requests transfer from another state and both states are parties to the Detainer Agreement as well as the Extradition Act. Thus a governor concerned with prisoners' rights may still make his request under the Extradition Act. *But see* **United States ex rel. Esola v. Groomes,** 520 F. 2d 830 (3d Cir. 1975) (detainer agreement must be used when available).

different choice will be made of necessity. There remain states which have enacted the Extradition Act, but not the Detainer Agreement. 11 **Uniform Laws Annotated** at 11, 68 (Supp. 1980). These states must employ the Extradition Act with its procedural safeguards for removal and interstate transfer of prisoners even if the Detainer Agreement is determined to be the exclusive means of transportation between member states. Thus, every Pennsylvania prisoner transferred to, for example, Louisiana, obtains substantially more procedural protections than respondent and others transferred to New Jersey.

In evaluating the rationality of the statutory differences, the relevant comparison must be between prisoners transferred under the Detainer Agreement and prisoners transferred under the Extradition Act. Even if there were a rational basis for affording persons at large greater safeguards than prisoners, certainly there can be no conceivable basis for the grossly disparate treatment of similarly situated prisoners transferred interstate under one statute rather than the other.

Moreover, even the distinction between the rights afforded prisoners under the Detainer Agreement and persons at large under the Extradition Act is irrational. For the purpose of an extradition hearing is not merely to challenge custody in the sending state. The hearing is also to determine and to test the legality of the interstate transfer. *See* **Michigan v. Doran,** *supra*, 439 U. S. at 289.

It is this opportunity to test and to determine the propriety of the transfer that is lacking under the Detainer Agreement. Because of this deficiency, respondent's transfer to New Jersey and the interstate transfers of other persons under the Detainer Agreement denied and continue to deny prisoners due process of law, and, in comparison with the provisions of the Extradition Act, violated the equal protection clause of the fourteenth amendment.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

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